

COMMISSIONERS
BOB STUMP – Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

OPEN MEETING ITEM



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ARIZONA CORPORATION COMMISSION

ORIGINAL

DATE: JULY 2, 2014

DOCKET NOS.: RR-02634A-14-0064; RR-02634A-14-0065 AND RR-02634A-14-0066

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Scott M. Hesla. The recommendation has been filed in the form of an Opinion and Order on:

**ARIZONA EASTERN RAILWAY COMPANY
(UPGRADE CROSSING)**

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

JULY 11, 2014

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

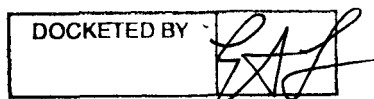
JULY 22, 2014 and JULY 23, 2014

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission

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JODI JERICH
EXECUTIVE DIRECTOR

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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 BOB STUMP - Chairman
4 GARY PIERCE
5 BRENDA BURNS
6 BOB BURNS
7 SUSAN BITTER SMITH

8 IN THE MATTER OF THE APPLICATION OF
9 THE ARIZONA DEPARTMENT OF
10 TRANSPORTATION TO UPGRADE AN
11 EXISTING CROSSING OF THE ARIZONA
12 EASTERN RAILWAY COMPANY AT NAVAJO
13 ROAD IN BYLAS, ARIZONA, AAR/DOT NO.
14 742-309Y.

DOCKET NO. RR-02634A-14-0064

11 IN THE MATTER OF THE APPLICATION OF
12 THE ARIZONA DEPARTMENT OF
13 TRANSPORTATION TO UPGRADE AN
14 EXISTING CROSSING OF THE ARIZONA
15 EASTERN RAILWAY COMPANY AT HOME
16 ALONE ROAD IN BYLAS, ARIZONA, AAR/DOT
17 NO. 742-307K.

DOCKET NO. RR-02634A-14-0065

15 IN THE MATTER OF THE APPLICATION OF
16 THE ARIZONA DEPARTMENT OF
17 TRANSPORTATION TO UPGRADE AN
18 EXISTING CROSSING OF THE ARIZONA
19 EASTERN RAILWAY COMPANY AT
20 CENTERPOINT ROAD IN BYLAS, ARIZONA,
21 AAR/DOT NO. 742-306D.

DOCKET NO. RR-02634A-14-0066

22 DECISION NO. _____

23 **OPINION AND ORDER**

19 DATE OF HEARING: June 2, 2014

20 PLACE OF HEARING: Phoenix, Arizona

21 ADMINISTRATIVE LAW JUDGE: Scott M. Hesla

22 APPEARANCES: Mr. James Redpath, Assistant Attorney General,
23 Transportation Section, on behalf of the Arizona
24 Department of Transportation; and

25 Mr. Charles Hains, Staff Attorney, Legal Division on
26 behalf of the Safety Division of the Arizona Corporation
27 Commission.

26 **BY THE COMMISSION:**

27 * * * * *

28 Having considered the entire record herein and being fully advised in the premises, the

1 Commission finds, concludes, and orders that:

2 **FINDINGS OF FACT**

3 1. On February 27, 2014, Arizona Department of Transportation ("ADOT") filed with
4 the Arizona Corporation Commission ("Commission") three applications for approval for the Arizona
5 Eastern Railway Company ("Railroad") to upgrade the following existing crossings located at the
6 Railroad's tracks: at Navajo Road in Bylas, Arizona, at AAR/DOT NO. 742-309Y ("Navajo Road");
7 at Home Alone Road in Bylas, Arizona, at AAR/DOT NO. 742-307K ("Home Alone Road"); and at
8 Centerpoint Road in Bylas, Arizona, at AAR/DOT NO. 742-306D ("Centerpoint Road") (collectively
9 "Applications"). Bylas is located on the San Carlos Indian Reservation approximately 35 miles
10 southeast of the City of Globe, Arizona.

11 2. On March 11, 2014, the Commission's Safety Division, Railroad Safety Section
12 ("Staff") filed a Motion to Consolidate the above-captioned proceedings.

13 3. On March 21, 2014, a Procedural Order was issued granting Staff's Motion to
14 Consolidate, establishing various filing dates, and scheduling a hearing for June 25, 2014.

15 4. On April 1, 2014, ADOT filed a Motion to Move Hearing Date requesting that the
16 hearing be rescheduled to June 2, 2014 or earlier. Contemporaneously with filing its Motion, ADOT
17 filed a copy of an e-mail correspondence from the Railroad that indicated the Railroad had no
18 objection to the Motion.

19 5. On April 11, 2014, by Procedural Order, ADOT's Motion to Move Hearing Date was
20 granted and the hearing was rescheduled for June 2, 2014. Additionally, other procedural dates for
21 filing were modified.

22 6. On May 15, 2014, ADOT filed documentation that it had provided public notice of the
23 Applications and hearing thereon.

24 7. On May 23, 2014, Staff filed a Staff Memorandum recommending approval of the
25 Applications.

26 8. On June 2, 2014, a full public hearing was convened, as scheduled. ADOT and Staff
27 appeared through counsel. At the conclusion of the hearing, the consolidated matter was taken under
28 advisement pending submission of a Recommended Opinion and Order to the Commission.

ADOT's Applications

9. Prior to the filing of the Applications, representatives of ADOT, the San Carlos Apache Tribe ("Tribe"), the Railroad, and Staff participated in several diagnostic review meetings of the proposed upgrades at Navajo Road, Home Alone Road, and Centerpoint Road. All parties who were present at these meetings were in agreement that the proposed enhancements would improve safety at all three crossings.

10. Mr. Jason Pike, ADOT's Railroad Coordinator, testified in support of the Applications.

11. Although the Applications state that the crossing upgrade projects will be completed within three years, Mr. Pike testified that it would only take two years to complete the projects. (Tr. 19:4-16).

12. Mr. Chris Watson, Grade Crossing Inspector and Assistant Supervisor for the Railroad Safety Section, testified that he had prepared the Staff Memorandum which describes the nature of ADOT's proposed upgrades at all three crossings. (Tr. 22:9-17).

Navajo Road

13. Navajo Road consists of one westbound through lane and one eastbound through lane. The crossing is currently equipped with automatic gates, flashing lights, and bells. The proposed improvements consist of installing two new automatic gates with LED flashing lights on the outside curbs of Navajo Road, a new concrete crossing surface, and constant warning time circuitry. In addition, ADOT will construct new sidewalks and restripe the roadway in advance of the crossing.

14. The Navajo Road crossing will be federally funded pursuant to 23 U.S.C. § 130 ("Section 130"). Section 130 projects are used to eliminate hazards to pedestrians and highway vehicles at public railroad crossings which are not primarily for the benefit of the Railroad. For a crossing to be eligible for Section 130 funding, the crossing must be designated on the Commission's Annual Crossing Array as being a priority to receive safety upgrades.¹ Once a crossing has been designated on an Annual Array, the Federal Highway Administration ("FHWA") issues

¹ The Navajo Road crossing was approved for safety upgrades in Decision No. 73610 (December 12, 2012) as part of the Commission's 2012 Annual Array.

1 authorizations for the design and construction of the project and then reimburses ADOT for the cost
2 after conducting a final inspection of the project.

3 15. Mr. Pike and Mr. Watson testified that the proposed upgrades are consistent with
4 crossings of this nature located throughout the state. (Tr. 8:1-4; Tr. 24:7-11).

5 16. According to Mr. Pike and Mr. Watson, Navajo Road is not a suitable candidate for
6 grade separation because the crossing does not meet any of the nine criteria utilized by FHWA for
7 consideration of grade separation. (Tr. 7:22-25; Tr. 24:20-23).

8 17. Mr. Watson testified that the proposed upgrades will improve the safety of the
9 crossing and are in the public interest. (Tr. 24:13-16).

10 18. Staff recommends approval of the proposed crossing upgrades at Navajo Road.

11 **Home Alone Road**

12 19. Home Alone Road consists of one westbound through lane and one eastbound through
13 lane. The crossing is currently equipped with passive warning signs and no automatic warning
14 devices. The proposed project consists of realigning Home Alone Road approximately 1000 feet
15 north of the existing crossing. The existing Home Alone Road crossing will be closed and removed
16 after the new crossing is in service.

17 20. The realigned Home Alone Road will consist of one westbound through lane, one
18 eastbound through lane, and one eastbound left turn lane. The proposed improvements consist of
19 installing two new automatic gates with LED flashing lights on the outside curbs of the realigned
20 Home Alone Road and one new automatic gate with LED flashing lights which will be located on a
21 new raised median. In addition, a new concrete crossing surface and constant warning time circuitry
22 will be installed. ADOT will construct the raised median, install new sidewalks, and restripe the
23 roadway in advance of the crossing.

24 21. Mr. Pike testified that the new sidewalk will be equipped with a pedestrian hybrid
25 beacon. (Tr. 10:6-9). According to Mr. Pike, the pedestrian hybrid beacon is similar to a crosswalk
26 signal and will allow pedestrians to cross the street more safely. (Tr. 10:9-24).

27 22. The Home Alone Road crossing will be federally funded through the Highway Safety
28 Improvement Program ("HSIP"). HSIP is a program created pursuant to 23 U.S.C. § 148 for the

1 purpose of achieving significant reductions in traffic fatalities and serious injuries on all public
2 roadways, including roadways on tribal lands. According to Mr. Watson, the application marks the
3 first time Staff has encountered a crossing upgrade project funded through HSIP. (Tr. 23:16-24:6).

4 23. Mr. Pike and Mr. Watson testified that the proposed upgrades would improve the
5 safety of the crossing. (Tr. 11:7-11; Tr. 25:20-25).

6 24. Mr. Pike and Mr. Watson indicated that grade separation is not warranted because the
7 crossing does not meet any of the nine criteria utilized by FHWA for consideration of grade
8 separation. (Tr. 11:3-6; Tr. 26:4-7).

9 25. Mr. Watson testified that proposed upgrades would constitute a significant
10 improvement to the crossing. (Tr. 25:2-9).

11 26. Testifying further, Mr. Watson stated that the proposed upgrades are consistent with
12 crossings of this nature located throughout the state and are in the public interest. (Tr. 25:10-13; Tr.
13 26:1-3).

14 27. Staff recommends approval of the proposed crossing upgrades at Home Alone Road.

15 **Centerpoint Road**

16 28. Centerpoint Road consists of one westbound through lane and one eastbound through
17 lane. The crossing is currently equipped with automatic gates, flashing lights, and bells. The
18 proposed improvements consist of installing two new automatic gates with LED flashing lights on the
19 outside curbs of Centerpoint Road and one new automatic gate with LED flashing lights which will
20 be located on a new raised median. Constant warning time circuitry and a new concrete crossing
21 surface will also be installed. In addition, ADOT will widen Centerpoint Road to accommodate a
22 new eastbound left turn lane, construct the raised median and sidewalks, and restripe the roadway in
23 advance of the crossing.

24 29. Mr. Pike stated that the Centerpoint Road crossing is a Section 130 project which is
25 eligible for federal funding.² (Tr. 17:20-25).

26 30. Mr. Pike and Mr. Watson testified that the proposed upgrades are consistent with
27

28 ² The Centerpoint Road crossing was approved for safety upgrades as part of the Commission's 2012 Annual Array.

crossings of this nature located throughout the state. (Tr. 19:18-22; Tr. 26:15-17).

31. Mr. Pike and Mr. Watson indicated that Centerpoint Road is not a suitable candidate for grade separation because the crossing does not meet any of the nine criteria utilized by FHWA for consideration of grade separation. (Tr. 19:23-25; Tr. 26:23-27:1).

32. According to Mr. Pike and Mr. Watson, the proposed upgrades would improve the safety of the crossing. (Tr. 20:1-5; Tr. 26:19-22).

33. Mr. Watson testified that the proposed upgrades are in the public interest. (Tr. 26:19-22).

34. Staff recommends approval of the proposed crossing upgrades at Centerpoint Road.

35. Staff's recommendations are reasonable and appropriate and should be adopted.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and over the subject matter of the Applications pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and 40-337.01.

2. Notice of the Applications was provided in accordance with the law.

3. The installation of the crossing upgrades is necessary for the public's convenience and safety.

4. Pursuant to A.R.S. §§ 40-336 and 40-337, the Applications should be approved as recommended by Staff.

5. After the installation of the crossing upgrades at Navajo Road, Home Alone Road, and Centerpoint Road in Bylas, Arizona, the Arizona Eastern Railway Company should maintain the crossings in accordance with A.A.C. R14-5-104.

ORDER

IT IS THEREFORE ORDERED that the Arizona Department of Transportation's Applications, as described herein, are hereby approved.

IT IS FURTHER ORDERED that the Arizona Eastern Railway Company shall complete the crossing upgrades as described in the Applications within two years of the effective date of this Decision.

1 IT IS FURTHER ORDERED that the Arizona Eastern Railway Company shall notify the
2 Commission, in writing, within ten days of both the commencement and completion of the crossing
3 upgrades, pursuant to A.A.C. R14-5-104.

4 IT IS FURTHER ORDERED that upon completion of the crossing upgrades, the Arizona
5 Eastern Railway Company shall maintain the crossings in compliance with A.A.C. R14-5-104.

6 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
8
9

10 CHAIRMAN

COMMISSIONER

11
12 COMMISSIONER

COMMISSIONER

COMMISSIONER

13
14 IN WITNESS WHEREOF, I, JODI JERICH, Executive
15 Director of the Arizona Corporation Commission, have
16 hereunto set my hand and caused the official seal of the
17 Commission to be affixed at the Capitol, in the City of Phoenix,
18 this _____ day of _____ 2014.

18 JODI JERICH
19 EXECUTIVE DIRECTOR

20 DISSENT _____

21
22 DISSENT _____
23 SMH:ru
24
25
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27
28

1 SERVICE LIST FOR:

ARIZONA EASTERN RAILWAY COMPANY

2 DOCKET NOS.:

RR-02634A-14-0064; RR-02634A-14-0065; and
RR-02634A-14-0066

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